

## Message Text

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64

ACTION EUR-25

INFO OCT-01 EA-11 NEA-10 IO-14 ISO-00 AID-20 CEA-02

CIAE-00 COME-00 EB-11 FRB-02 INR-10 NSAE-00 RSC-01

OPIC-12 SPC-03 TRSE-00 CIEP-02 LAB-06 SIL-01 OMB-01

STR-08 AGR-20 OIC-04 SS-20 NSC-10 L-03 PA-04 PRS-01

USIA-15 DRC-01 ( ISO ) W

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P R 181643Z OCT 73

FM USMISSION OECD PARIS

TO SECSTATE WASHDC PRIORITY 876

INFO AMEMBASSY ANKARA

AMEMBASSY ATHENS

AMEMBASSY BERN

AMEMBASSY BONN

AMEMBASSY BRUSSELS

AEMBASSY CANBERRA 3632

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY THE HAGUE

AMEMBASSY HELSINKI

AMEMBASSY LISBON

AMEMBASSY LONDON

USMISSION EC BRUSSELS UNN

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AMEMBASSY LUXEMBOURG

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E.O. 11652: N/A

TAGS: EFIN, OECD

SUBJECT: XCSS EXPERTS MEETING ON INVESTMENT, 16-17 OCT 1973

REF: A) CES/73.88 OF OCT 2 (NOTAL)

B) USOECD 18666

SUMMRY. AD HOC MEETING OF EXPERTS DEVOTED ESSENTIALLY TO INVESTMENT QUESTIONS POSED BY SECRETARIAT IN REFDODC. DISCUSSION SHOWED EXPECTED DIVERGENCE OF VIEWS. HOWEVER, CONSENSUS EMERGED ON DESIRABILITY INTERNATIONAL AGREEMENT ON NATIONAL TREATMENT AND ON DOUBTFUL VALUE OF INTRODUCING TAKEOVERS AS SEPARATE TOPIC FOR UNDERSTANDINGS AND CONSULTATIONS. ON DISTORTIONS AND INCENTIVIES, DIFFERENCE OF VIEWSSO PRO-OUNCED AS TO GIVE NO CLEAR GUIDANCE TO SECRETARIAT, AND SECRETARIAT LIKELY TO ASK FOR FURTHER DIRECTION FROM XCSS. ON MNC'S, CONSIDERABLE CONFUSION CONTINUES TO EXIST ON HOW TO APPROACH POSSIBLE FORMULATION OF GUIDELINES, THEIR CONTENT, ETC. COMMON MAKET COUNTRIES MORE HESITANT THAN IN PRIOR XCSS MEETING TO EXPRESS THEMSELVES ON MNC EXERCISE IN OECD, SOME OF THEM SPECIFICALLY MENTIONING THEY ARE AWAITING EC COMMISSION'S PAPER ON MNC'S WHICH WILL BE DISCUSSED IN NEAR FUTURE BY EC COUNCIL. OECD SECRETARIAT WILLUSE DISCUSSION OF EXPERTS IN MAKING WRITTEN REPORT TO NOV XCSS WHICH WILL RAISE ISSUES FOR MORE DETAILED GUIDANCE. SECRETARIAT PLANNING ANOTHER EXPERTS MEETING END NOV OR EARLY DEC. END SUMMARY.

2. GENERAL STATEMENTS. DESPITE SECRETARIAT'S ADMONITION AGAINST IT, SEVERAL COUNTRIES INSISTED ON MAKING GENERAL STATEMENTS ON SECRETARIAT'S DOCUMENT AND ON APPROACH TO BE TAKEN UNDER XCSS MANDATE ON INVESTMENT. CANADIANS CRITICIZED SECRETARIAT'SDOCUMENT AS BEING PARTIAL, SELECTIVE AND STRUCTURED FROM POINT OF VIEW OF CAPITAL EXPORTING COUNTRY OR COUNTRY HAVING LITTLE FOREIGN INVESTMENT. FELT THERE WAS TOO MUCH EMPHASIS ON OBLIGATIONS OF HOST GOVERNMENTS LIMITED OFFICIAL USE  
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WITHOUT SUFFICIENT RECOGNITION OF RIGHTS HOST COUNTRIES TO CONTROL ECONOMIC ENVIRONMENT OR OF OBLIGATIONS INVESTING COUNTRIES IN MATTERS SUCH AS EXTRATERRITORIALITY AND DIS-PLACEMENT OF HOST COUNTRIES' DOMESTIC INVESTORS. AUSTRALIANS ENDORSED CANADIA POSITION ON INSUFFICIENT ATTENTION TO PROBLEMS OF CAPITAL IMPORTING COUNTRIES AND STATED SECRETARIAT'S PAPER HAD ADVANCED IDEAS AND PROPOSALS WITHOUT FIRST GOING THROUGH NECESSARY PROCESS OF FACTURAL STUDIES CALLED FOR BY XCSS MANDATE. JAPAN ACCUSED SECRETARIAT OF DOWN-PLAYING MNC'S AND SWEDEN EXPRESSED ITS STANDARD CONCERN WITH MNC'S. FRANCE CRITICIZED SECRETARIAT'S DOCUMENT FOR (A) OMITTING ROLE OF MNC'S IN LONG- AND SHORT- TERM CAPITALMOVEMENTS WHICH WAS

MORE URGENT ASPECT THAN OTHERS; (B) RAISING SERIOUS QUESTIONS OF OECD COMPETENCE, SINCE IT SEEMED TO BE GETTING TO AREAS OF DOMESTIC POLICY, AND (C) DUPLICATION, SINCE MAIN TOPICS ALREADY BEING DEALT WITH IN GATT OR IN OTHER COMMITTEES OF OECD. U.S. RECALLED THAT THERE HAD ALREADY BEEN EXTENSIVE GENERAL DEBATE ON INVESTMENT QUESTIONS IN FOUR MEETINGS OF XCSS, AND THAT PURPOSE OF EXPERTS WAS NOT TO CONTINUE THIS DEBATE BUT TO HELP SECRETARIAT FULFIL SPECIFIC MANDATE GIVEN BY XCSS IN JULY. WE INDICATED THAT WHILE ONE COULD HAVE VARIOUS VIEWS AS TO COMPLETENESS OR EMPHASIS OF SECRETARIAT'S PAPER, IT DID PROVIDE REASONABLE DOCUMENT FOR PURPOSES OF FOCUSING DISCUSSION, AND ACCORDINGLY EXPERTS SHOULD GET ON WITH TASK. GERMAN EXPERT SUPPORTED THIS POSITION.

3. NATIONAL TREATMENT. CHAIRMAN (ASST. SECGEN. ABRAMOWSKI) SUMMARIZED DISCUSSION ON THIS TOPIC AS SHOWING THAT MOST EXPERTS SAW MERIT IN GIVING FORMAL EXPRESION IN OECD TO PRINCIPLE OF NATIONAL TREATMENT IN ASPECTS NOW COVERED BY CAPITAL MOVEMENTS CODE (CMC). U.S. RAISED QUESTION AS TO DISTINCTION UNDER PRINCIPLE OF NATIONAL TREATMENT, AND APPLICABILITY CMC, WITH RESPECT TO THREE ASPECTS: (A) MOVEMENT OF CAPITAL AT BORDER; (B) RIGHT OF ESTABLISHMENT AND (C) TREATMENT OF ON-GOING OPERATIONS OF FOREIGN INVESTMENT. SECRETARIAT ACKNOWLEDGED THAT QUESTION (ESPECIALLY AS TO WHETHER (B) CLEARLY COVEREDBY CMC) WAS AMBIGUOUS AND, AT U.S. SUGGESTION, PROMISED ATTEMPT PREPARE NOTE ON SUBJECT FOR XCSS. CONSIDERABLE DIFFERENCE OF OPINION EXPRESSED AS TO PROBABLE EXTENT OF EXCEPTIONS TO NATIONAL TREATMENT PRINCIPLE WHICH COUNTRIES LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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WOULD WISH TO EXERCISE. CANADIANS, FOR EXAMPLE, CLEARLY WANT TO PRESERVE FREEDOM FOR CASE-BY-CASE TREATMENT OF COMPANIES ACCORDING TO CRITERIA OF DOMESTIC INTEREST AND TRANSFORMATION OF DOMESTIC ECONOMIC STRUCTURE. AUSTRALIA TOOK SIMILAR STAND. U.S. WARNED THAT CARE SHOULD BE TAKEN PRINCIPLE NOT BE OVERWHELMED THROUGH EXCESSIVE EXCEPTIONS AND POINTED OUT THAT IN DYNAMIC WORLD STRUCTURE COUNTRIES SHOULD LOOK UPON FOREIGN INVESTMENT NOT JUST FROM VIEW OF HOST COUNTRIES, BUT AS ACTUAL OR POTENTIAL SOURCE COUNTRIES AS WELL. GERMANY, SWITZERLAND AND NETHERLANDS, IN PARTICULAR, SUPPORTED THIS VIEW. U.S. ALSO NOTED CMC OBLIGATIONS SHOULD NOT BE DUPLICATED AND THAT MIGHT BE USEFUL TO DISTINGUISH BETWEEN TREATMENT ACCORDED TO SUBSIDIARIES AND BRANCHES. U.. ALSO SUPPORTED CANADIAN POINT THAT ANY EXCEPTIONS TO NATIONAL TREATMENT SHOULD BE ON MFN BASIS.

4. SECGEN'S REPORT TO XCSS LIKELY TO REFLECT SUGGESTION THAT SPECIFIC LANGUAGE BE DEVELOPED TO EXPRESS NATIONAL TREATMENT PRINCIPLE AND EXCEPTIONS. EXPERTS MEETING DID NOT CLARIFY HOW DRAFTING MIGHT TAKE PLACE NOR WHETHER ATTEMPT WOULD BE MADE

TO DEVELOP SOME GENERAL MULTILATERAL EXCEPTIONS OR SPECIFIC  
EXCEPTIONS SUBJECT TO PRIOR SCRUTINY THAT INDIVIDUAL COUNTRIES  
WOULD WISH TO MAKE.

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ATHENS  
BERN  
BONN  
BRUSSELS  
AEMBASSY CANBERRA  
COPENHAGEN

DUBLIN  
THE HAGUE  
HELSINKI  
LISBON  
LONDON  
EC BRUSSELS UNN  
USNATO  
LUXEMBOURG  
MADRID  
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